

Judge Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	NO. CR10-5586BHS
)	
Plaintiff,)	
)	GOVERNMENT'S MOTION <i>IN</i>
v.)	<i>LIMINE</i> TO PROHIBIT
)	ANY DEFENSE BASED ON
STEPHEN M. KELLY,)	AN INTERPRETATION OF
SUSAN S. CRANE,)	INTERNATIONAL LAW,
WILLIAM J. BICHSEL)	INCLUDING NUREMBERG
ANNE MONTGOMERY, and)	DEFENSE, AND THE
LYNNE T. GREENWALD,)	NECESSITY DEFENSE
)	
Defendants.)	
_____)	

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, Arlen R. Storm and Brian D. Werner, Assistant United States Attorneys for said District, hereby moves the Court for an Order prohibiting the presentation at trial of any defense based on an interpretation of international law, including the Nuremberg defense, or the necessity defense.

On October 8, 2010, the defendants filed a Motion to Immediately Dismiss Charges, and thereafter, on October 29, 2010, they filed an "Expanded Motion to Dismiss Charges Because Government Cannot Prove the Essential Elements of Charges Because the Property Allegedly Damaged Conceals Unlawful Weapons of Mass Destruction." In these motions, the defendants moved the Court to dismiss the charges against them or,

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1 in the alternative, for an order to permit them to introduce, at trial, evidence and
2 testimony regarding the application of international law and the necessity defense. In
3 connection with these defenses, in their pleadings and during their court appearances, the
4 defendants also have discussed the lethality of nuclear weapons, including, for example,
5 their beliefs regarding the number of nuclear weapons in existence and the damage those
6 weapons theoretically could inflict.

7 On November 22, 2010, this Court, citing applicable case law rejecting the
8 defendants' defenses, including *United States v. Dorrell*, 758 F.2d 427, 430 (9th Cir.
9 1985) (when offer of proof is "insufficient as a matter of law . . . the trial court should
10 exclude the defense and the evidence offered in support"), *United States v. Kabat*, 797
11 F.2d 580, 590 (8th Cir. 1986), and *United States v. Schoon*, 971 F.2d 193, 195 (9th Cir.
12 1991), issued an Order denying the defendants' motions.

13 Pursuant to the Court's November 22, 2010, Order, the government hereby moves
14 the Court, *in limine*, for an Order prohibiting the defendants from presenting evidence and
15 argument relating to the interpretation of international law, including the Nuremberg
16 defense, and relating to the necessity during (1) voir dire; (2) opening statements; (3) the
17 defendants' case-in-chief; (4) cross examination; (5) jury instructions; and (6) closing
18 arguments.

19 In addition, pursuant to Federal Rule of Evidence 402, the government moves the
20 Court for an Order prohibiting the defendants from presenting evidence or argument
21 relating to the lethality of the nuclear weapons. In this case, evidence relating to the
22 lethality of nuclear weapons would be relevant only to the defendants' necessity defense.
23 If that defense is prohibited by the Court, such evidence would not be relevant to any
24 issue before the jury and, in fact, would present a high likelihood of confusing the issues
25 before the jury. Accordingly, if the Court enters an Order prohibiting the necessity
26 defense, the government moves the Court to prohibit evidence or argument regarding the
27 lethality of nuclear weapons during (1) voir dire; (2) opening statements; (3) the
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1 defendants' case-in-chief; (4) cross examination; (5) jury instructions; and (6) closing
2 arguments.

3 DATED this 26th day of November, 2010.

4 Respectfully submitted,

5 JENNY A. DURKAN
6 United States Attorney

7 /s/ Arlen R. Storm
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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

/s/ Rachel McDowell

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